136-580

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1291. 268

CHARLES DAVENPORT, PLAINTIFF IN ERROR,

vs.

THE TOWN OF PARIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 16, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1291.

CHARLES DAVENPORT, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the southern district of Illinois, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between Charles Davenport, plaintiff, and The Town of Paris, defendant, a manifest error hath happened, to the great damage of the said plaintiff, Charles Davenport, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that
2 you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

J. A. JONES, *Clerk.*

Filed September 30, 1886.

J. A. JONES, *Clerk.*

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and, in the absence of the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, on Thursday, the twelfth day of November, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

J. A. JONES, *Clerk.*

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

CHARLES DAVENPORT
v.
TOWN OF PARIS. } Assumpsit.

Be it remembered that heretofore, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and eighty-one, came Charles Davenport, the plaintiff herein, by Messrs.

Sanders and Williams, his attorneys, and filed in the clerk's
4 office of said court his bond for costs herein; which said bond for costs is in the words and figures following, to wit:

Bond for Costs.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Circuit Court of the United States of America. June Term, A. D. 1881.

CHARLES DAVENPORT
vs.
THE TOWN OF PARIS. } In Assumpsit.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 23rd day of May, 1881.

GEORGE A. SANDERS.

(Indorsed:) Filed May 23, 1881. J. A. Jones, clerk.

And afterwards, to wit, on said twenty-third day of May of the year last aforesaid, a summons was issued in said cause out of the clerk's office of said court directed and delivered to the mar-
5 shal of said district to execute; which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Circuit Court of the United States of America.

The United States of America to the marshal of the southern district of Illinois, Greeting:

We command you to summon Town of Paris, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto Charles Davenport of a plea of assumpsit, to his damage, as he alleges, of six thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-third day of May, in the year of our Lord one thousand eight hundred and eighty one, and of our Independence the one hundred and fifth year.

[L. S.] J. A. JONES, *Clerk.*

Marshal's Return.

I hereby appoint Rufus S. Cusick my special deputy to execute this writ.

May 24th, 1881.

JACOB WHEELER, *U. S M.*

6 Executed this writ by reading the same to and delivering a true copy thereof to Z. T. Baum and Rob't B. Hennesy, supervisors for the town of Paris.

May 26th, 1881.

JACOB WHEELER, *U. S. M.*
RUFUS S. CUSICK,
Special Deputy.

(Indorsed:) Filed June 2, 1822. J. A. Jones, clerk.

Afterwards, to wit, on the twenty-seventh day of May of the year last aforesaid, came again said plaintiff, by his attorneys, and filed in the clerk's office of said court his declaration and copies of instruments and account sued on; which said declaration, copies of instruments, and account sued on are in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court. June Term, A. D. 1881.

CHARLES DAVENPORT
vs.
THE TOWN OF PARIS. } Assumpsit.

And now comes the plaintiff, Charles Davenport, a citizen of the State of Maine, by his attorneys, Sanders and Williams, and
7 complains of The Town of Paris, defendant, of a plea of trespass in the case on promises, for that whereas the defendant heretofore, to wit, on the twenty-third day of March, A. D. 1871, at the district aforesaid, made its certain sixty-one obligations, commonly called "bonds," by each of which said obligations, under the name and style of "The Township of Paris, Edgar county, Illinois," it acknowledges itself to owe and promises to pay to the Paris and Decatur Railroad Company, or bearer, the sum of five hundred dollars, lawful money of the United States of America, at the Security Bank of the city of New York, ten years from the first day of March, 1871, with interest at the rate of seven per centum per annum, payable annually at said bank, upon presentation and delivery of the several coupons thereto annexed, as they respectively become due—irrevocably pledging its faith and revenue to the payment of the interest and principal in manner aforesaid—moreover reciting upon its face that the said bond is issued under and by virtue of certain acts of the State of Illinois, and authority conferred by a certain election held in said township on the 31st day of October, 1869, and prior to the adoption of the present constitution of the

State of Illinois, as will more fully appear from a copy of one of said instruments given below; each of said bonds moreover
8 bearing the signature of Henry Van Sellar, supervisor and agent, and Jas. A. Dittoe, clerk of said town of Paris, said bonds being numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 41 to 64, inclusive, and 66 to 80, inclusive, all of said bonds being of the same form, tenor, and effect, except as to the numbers thereof, to wit, of the same form, tenor, and effect as bond No. 1, a copy of which appears below.

And said township moreover, on the day aforesaid and at the place aforesaid, made its certain two hundred and thirty-five obligations, commonly called coupons, to secure the payment of the interest on said bonds, as aforesaid, by each of which said coupons the said Township of Paris bound itself and promised to pay to the bearer, on the 1st day of March of the year when said interest so secured became due, at the Security Bank of the City of New York, thirty-five dollars, being one year's interest in bond of corresponding number, said coupons moreover being signed by H. Van Sellar, supervisor and agent, and Jas. A. Dittoe, clerk of said township.

Said coupons are more particularly described as follows, to wit:

Fifty-one (51) coupons of series 7, from bonds numbered
9 1, 5, 6, 7, 9, 11, 12, 13, 14, 17, 18, 19, 20, and Nos. 41 to 64, inclusive; Nos. 66 to 80, inclusive, due March 1st, 1878.

Sixty-one (61) coupons of series 8, from bonds numbered 1, 9, 10, 16, 18, 19, 20, 23, 24, 25, 26, 41, 64, and 66 to 80, inclusive, due March 1st, 1879.

Sixty-one (61) coupons of series (9) nine, from bonds numbered 1 to 9, 10 to 16, 18 to 20, 23 to 26, 41 to 64, 66 to 80, inclusive, due March 1st, 1880.

Sixty-one (61) coupons of series ten (10), from bonds numbered 1 to 9, 10 to 16, 18 to 20, 23 to 26, 41 to 64, 66 to 80, inclusive, due March 1st, 1880—

All of said coupons being of the same form, tenor, and effect, except as to their number and dates of maturity, to wit, of the same form, &c., as coupon No. 1, series 7, a copy of which appears below.

That plaintiff is the lawful holder and owner of said bonds and coupons purchased before maturity for a good and valuable consideration and without notice, by means whereof, and by force of the statute in such case provided, the defendant became and was liable to pay to the plaintiff at the time and place aforesaid the several sums of money in the said bonds and coupons specified, according to the tenor and effect thereof; and, being so liable, the defendant then and there promised the plaintiff well and truly
10 to pay him the sums due as aforesaid.

And whereas, also, the defendant afterwards, to wit, on the first day of May, 1881, at the place aforesaid, became and was indebted to the plaintiff in the further sum of sixty thousand dollars for goods, wares, and merchandise before then sold and delivered by the plaintiff to defendant at its request, and in the like sum for work, labor, and services done and performed before that time and ma-

terials for the same provided by the plaintiff for the defendant at its request, and in the like sum for monies before then paid out and expended by the plaintiff for the defendant at its request, and in the like sum for monies before then lent and advanced by plaintiff to defendant at its request, and in the like sum for monies before then had and received by the defendant to the use of the plaintiff, and in the like sum for monies before then due and foreborne by plaintiff to defendant at its request, and in the like sum for monies found to be due plaintiff from defendant on an account then and there stated between them.

And, being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to well and truly pay him the several sums last aforesaid.

11 Nevertheless the said defendant, though often requested, has not paid the plaintiff the several sums of money due as aforesaid upon said bonds and coupons, nor either of them, nor any part thereof; nor has the defendant, though likewise requested, paid to the plaintiff the several other sums due as aforesaid, nor either of them, nor any part thereof, but neglects and refuses so to do, to the damage of plaintiff of sixty thousand dollars; wherefore plaintiff brings suit.

SANDERS AND WILLIAMS,
Plaintiffs' Attorneys.

Copies of Instruments and Account.

Copy of coupon No. 1, series 7.

$35. No. 1.

The Township of Paris will pay to the bearer on the first day of March, A. D. 1878, at the **7** Security Bank of the city of New York thirty-five dollars, being one year's interest on bond as numbered above.

H. VAN SELLAR,
Supervisor and Agent.
JAS. A. DITTOE, *Clerk.*

12 *Copy of Bond No.* 1.

UNITED STATES OF AMERICA:

No. 1. State of Illinois. $500.

County of Edgar. Township of Paris.

Know all men by these presents that The Township of Paris, in the county of Edgar and State of Illinois, acknowledges itself to owe and be indebted in the sum of five hundred dollars, lawful money of the United States of America, which sum the said township of Paris promises to pay to (**five hundred dollars, $500**) the Paris and

Decatur Railroad Company, or bearer hereof, at the Security Bank of the city of New York, ten years from the first day of March, 1871, with interest at the rate of seven per centum per annum, payable annually at said bank upon presentation and delivery of the several coupons hereto annexed, as they respectively become due, and to the payment of said principal and interest in the manner aforesaid the faith and revenue of said Township of Paris is irrevocably pledged.

This bond is issued in pursuance of an election held in said township of Paris on the 30th day of October, 1869, at which election the supervisor of said township of Paris was duly elected agent of
13 said township to subscribe the sum of fifty thousand dollars to the capital stock of the Paris and Decatur Railroad Company and to issue the bonds of said township in payment of said stock, to aid in the construction of said railroad, and by virtue of an act of the Legislature of the said State of Illinois, entitled "An act to incorporate the Paris and Decatur Railroad Company," approved February 18th, 1881.

On back: Certificate of registration. Dated October 17th, 1871. Signed C. E. Lippincott, "auditor P. C."

In witness whereof the supervisor, as agent of said township, has hereunto set his hand and seal this the 23rd day of March, A. D. 1871.

HENRY VAN SELLAR,
Supervisor and Agent.
JAS. A. DITTOE, *Clerk.*

Coupon.	Coupon.	Coupon.

Account.

The Town of Paris to Charles Davenport, Dr.

To goods, wares, and mdse.	$60,000
" labor and services	60,000
" money paid and expended	60,000
" " lent and advanced, &c.	60,000
" " had to use, &c.	60,000
" " due as interest	60,000
" " on account stated	60,000

(Indorsed:) Filed May 27, 1881. J. A. Jones, clerk.

14 Afterwards, to wit, on the sixth day of June, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Rule to Plead.

CHARLES DAVENPORT } Assumpsit.
v.
TOWN OF PARIS. }

On motion of plaintiff, by Messrs. Sanders and Williams, his attorneys, the defendant, having been regularly served with process, is ruled to plead herein by Wednesday, the 8th day of June inst.

Then afterwards, to wit, on the eighth day of June, in the year last aforesaid, came the defendant, by Henry Van Sellar, Esq., its attorney, and filed in the clerk's office of said court its plea herein; which said plea is in the words and figures following, to wit:

Plea.

In the United States Circuit Court, Southern District of Illinois.
June Term, A. D. 1881.

15 THE TOWN OF PARIS } Assumpsit.
vs.
CHARLES DAVENPORT. }

Now comes the said defendant, by its attorney, Van Sellar, and defends, etc., and says that it did not undertake and promise in manner and form as the plaintiff has alleged against it in his declaration in this cause, and of this it puts itself upon the country.

VAN SELLAR,
Def't's Att'y.

STATE OF ILLINOIS, } *ss:*
Sangamon County, }

Henry Van Sellar, being duly sworn, on his oath states that the above plea by defendant pleaded in above cause is true in substance and in fact.

HENRY VAN SELLAR.

In the foregoing cause it is agreed that under the general issue above pleaded any defense may be made which might be made under any competent pleading in said cause.

VAN SELLAR,
Att'y for Def't.

GEO. A. SANDERS,
Att'y for Pl'ff.

(Indorsed:) Filed June 8, 1881. J. A. Jones, clerk.

16 Then afterwards, to wit, on the twenty-seventh day of June, in the year last aforesaid, came again said defendant, by its attorney, and filed in the clerk's office of said court its certain other plea, and also a stipulation as to facts; which said plea and stipulation are in the words and figures following, to wit:

Plea.

In the United States Circuit Court, Southern District of Illinois.
June Term, A. D. 1881.

CHARLES DAVENPORT
vs.
TOWN OF PARIS. } Assumpsit.

Now comes the said defendant, by Van Sellar, its attorney, and defends the many, etc., and says that it did not undertake and promise in manner and form as the plaintiff has alleged against it in his declaration in this cause, and of this it puts itself upon the country.

VAN SELLAR,
Def't's Att'y.

STATE OF ILLINOIS, }
Edgar County, } *ss:*

Z. T. Baum, being duly sworn, on his oath says that he is
17 the supervisor of the town of Paris, and the foregoing plea is true in substance and in fact.

Z. T. BAUM.

Sworn and subscribed before me this 25th day of June, 1881, by above-named Z. T. Baum.

[SEAL.] LEV. W. BAKER,
Co. Clerk.

(Indorsed:) Filed June 27, 1881. J. A. Jones, clerk.

Stipulation as to Facts, &c.

It is stipulated in the matter of Charles Davenport *vs.* The Town of Paris, in assumpsit, now pending in the U. S. circuit court for the southern district of Illinois, that the instruments sued on, being bonds numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 23, 24, 25, 21, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80, with coupons now attached, which purport to be the bonds of the town of Paris, were signed, respectively, by Henry Van Sellar and James A. Dittoe on the dates of said instruments, and that the said Henry Van Sellar was on that date supervisor of said town of Paris, and that the said James A. Dittoe was on said date the town clerk of said town of Paris.

18 It is also agreed that a jury is waived in said matter. The above coupons are as *are as* follows: 61 of series 8, 9, and 10 and 51 of series 7, being 234 coupons.

It is further stipulated that said bonds and coupons are identical in character with the bonds and coupons in the matter of Skinner *vs.* Town of East Oakland, tried in this court and appealed to the U. S. Supreme Court, tried there and reported in 94 U. S., 255, and issued in same manner, the only difference being that these bonds

and coupons were issued by the town of Paris instead of the town of East Oakland.

In case of appeal to the U. S. Supreme Court this case may be submitted under rule 20 on written briefs.

GEORGE A. SANDERS,
For Pl'tff.

H. VAN SELLAR,
For Def't.

(Indorsed:) Filed June 27, 1881. J. A. Jones, clerk.

Then afterwards, to wit, on the twelfth day of November, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-five, the following further proceedings
19 were had in said court in said cause and entered of record, to wit:

Judgment.

CHARLES DAVENPORT
vs.
TOWN OF PARIS. } Assumpsit.

This day comes as well the plaintiff, by Messrs. Sanders and Haynes, his attorneys, as the defendant, by H. Van Sellar, Esq., its attorney, and the issue joined by consent is tried by the court, a jury being waived by stipulation in writing; and the court, having heard the evidence and argument of counsel, and being sufficiently advised in the premises, finds the issue in favor of defendant.

It is therefore ordered and adjudged by the court that the defendant recover of the plaintiff the costs and charges by it about its defense in this behalf expended, and that execution issue therefor.

And afterwards, to wit, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-six, came again said plaintiff, by his attorneys, and filed in the clerk's
20 office of said court his bond on writ of error herein, which said bond is in the words and figures following, to wit:

Bond on Writ of Error.

Know all men by these presents that Charles Davenport, of the city of Bath and State of Maine, and George A. Sanders and R. W. Haynes, of the city of Springfield and State of Illinois, are held and firmly bound unto The Town of Paris, Edgar county, Illinois, in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly by these presents.

Witness our hands and seals this 21st day of September, A. D. 1886.

The condition of the above-bounden obligation is such that whereas the said Town of Paris did, on the 15th day of November, A. D. 1885, in

the United States circuit court for the southern district of Illinois, and at the June term thereof, recover a judgment against the above-bounden Charles Davenport for its costs in that behalf sustained and for the dismissal of the cause in said court, wherein said Charles Davenport was plaintiff and the said Town of Paris was defendant, from which said judgment of the said circuit court of the
21 United States for the southern district of Illinois the said Charles Davenport has prayed an appeal to the Supreme Court of the United States, which said prayer for an appeal has been granted upon the said Charles Davenport executing a bond, with security to be approved by the court, in the penal sum of five hundred dollars:

Now, the condition of the above obligation is such that if the said Charles Davenport shall prosecute his appeal to effect and answer all damages and costs if he fails to make the said cause good, then the above obligation to be void; else to remain in full force and virtue.

CHAS. DAVENPORT. [SEAL.]
GEORGE A. SANDERS. [SEAL.]
R. W. HAYNES. [SEAL.]

Witnesses to C. D.:
EDWARD E. BRIRY.
JOHN F. BRIRY.

Approved:

S. H. TREAT,
District Judge.

(Indorsed:) Filed September 30, 1886. J. A. Jones, clerk.

22 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern District of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein Charles Davenport is plaintiff and The Town of Paris is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

J. A. JONES, *Clerk.*

23 THE UNITED STATES OF AMERICA, *ss:*

Supreme Court of United States.

To The Town of Paris, Edgar county, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on

the second Monday of October, 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Charles Davenport is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. S. H. Treat, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this second day of October, in the year of our Lord eighteen hundred and eighty-six, and of our Independence the one hundred and eleventh year.

S. H. TREAT,
District Judge.

Service of this citation is hereby accepted.

H. VAN SELLAR,
Att'y for The Town of Paris.

[Endorsed:] Charles Davenport *v.* Town of Paris. Citation.

24 *Assignment of Errors.*

In the Supreme Court of the United States. Oct. Term, A. D. 1886.

CHARLES DAVENPORT, Plaintiff in Error,
vs.
THE TOWN OF PARIS, Defendant in Error.

Error to the circuit court of the United States for the southern district of Illinois.

And now comes the plaintiff in error and says that in the record and proceedings aforesaid in this case there is manifest error, to wit:

1. The court below erred in construing the powers granted by the Legislature in the charter of the Paris and Decatur Railroad Company to subscribe to its stock as limited only to private corporations.

2d. The court below erred in holding that there was no legislative power granted in the charter of the Paris and Decatur Railroad Company to the defendant in error, The Town of Paris, a public corporation, to subscribe to the stock of that railroad company and issue its bonds in payment thereof.

3d. The court below erred in not holding the bonds and coupons issued by the defendant in error, The Town of Paris, by its duly elected officials for that purpose, to said Paris and Decatur Railroad Company, and offered in evidence as the valid obligations of the Town of Paris.

25 4th. The court below erred in giving judgment for the defendant in error.

5th. The court below erred in not giving judgment for the plaintiff in error.

6th. That the said judgment is contrary to the law and the evidence in the case.

Wherefore, and for divers other errors apparent upon the face of the record and proceedings aforesaid, said plaintiff in error prays that the said judgment may be reversed, etc.

GEORGE A. SANDERS,
For Plaintiff in Error.

26 [Endorsed:] Sup. Court U. S., 1886. Oct'r term. No. 1291. Charles A. Davenport, pl'ff in error, *vs.* The Town of Paris. Assignment of errors.

[Stamped:] Office Supreme Court U. S. Filed Feb. 18, 1887. James H. McKenney, clerk.

Endorsed on cover: S. Illinois C. C. U. S. No. 1291. Charles Davenport, plaintiff in error, *vs.* The Town of Paris. Filed November 16, 1886.

Office Supreme Court U. S.
FILED.
OCT 21 1889
JAMES. H. McKENNEY.
CLERK.

UNITED STATES OF AMERICA

IN THE

SUPREME COURT OF THE UNITED STATES.

AT THE OCTOBER TERM, A. D. 1889.

CHARLES DAVENPORT,

vs.

THE TOWN OF PARIS.

No. 268.

ASSUMPSIT.

ERROR TO CIRCUIT COURT SOUTHERN DISTRICT OF ILLINOIS.

GEORGE A. SANDERS,

For Plaintiff.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1889.

ASSIGNMENT OF ERRORS.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

CHARLES DAVENPORT, *Plaintiff in Error*,

vs.

THE TOWN OF PARIS, *Defendant in Error*.

Error to the Circuit Court of the United States for the Southern District of Illinois.

And now comes the Plaintiff in Error and says that in the record and proceedings aforesaid in this case there is manifest error, to-wit:

1st. The Court below erred in construing the powers granted by the Legislature in the Charter of the Paris and Decatur Railroad Company to subscribe to its stock as limited only to private corporations.

2d. The Court below erred in holding that there was no legislative power granted in the Charter of the Paris and Decatur Railroad Company to the Defendant in Error, the Town of Paris, a public corporation, to subscribe to the stock of that railroad company, and issue its bonds in payment thereof.

3d. The court below erred in not holding the bonds and coupons issued by the Defendant in Error, the Town of Paris, by its duly elected officials for that purpose, to said Paris and Decatur Railroad Company, and offered in evidence as the valid obligations of the Town of Paris.

4th. The court below erred in giving judgment for Defendant in Error.

5th. The court below erred in not giving judgment for the Plaintiff in Error.

6th. That the said judgment is contrary to the law and the evidence in the case.

Wherefore, and for divers other errors apparent upon the face of the record and proceedings aforesaid, said Plaintiff in Error prays that said judgment may be reversed, etc.

GEO. A. SANDERS,

For Plaintiff in Error.

UNITED STATES OF AMERICA.

IN THE

SUPREME COURT OF THE UNITED STATES.

AT THE OCTOBER TERM, A. D. 1889.

CHARLES DAVENPORT,

vs.

THE TOWN OF PARIS.

No. 268.

ASSUMPSIT.

ERROR TO CIRCUIT COURT SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT.

This is a suit on municipal bonds and coupons issued by the defendant to the Paris & Decatur Railroad Co., dated October 18, 1871, and due in ten years, with coupons attached representing 7 per cent. interest on the bonds.

The bonds were issued as recited upon their face: "In pursuance of an election held in said Township of Paris on the 30th day of October, 1869, at which election the Supervisor of said Township of Paris was duly elected agent of said township, to subscribe the sum of fifty thousand dollars to the capital stock of the Paris & Decatur Railroad

Co., and to issue the bonds of said township in payment of said stock, to aid in the construction of said railroad, and by virtue of an act of the Legislature of the said State of Illinois, entitled 'An act to incorporate the Paris & Decatur Railroad Co.,'" approved February 13, 1861.

They were signed by Henry VanSellar, Supervisor and Agent, and by Jas. A. Dittoe, Clerk. In other respects they are in the usual form of such township bonds. They were duly registered by the State Auditor under the registration act of Illinois of April 16, 1869, on the 17th day of October, 1871, by C. E. Lippincott, Auditor of Public Accounts. [See copy of bonds and coupons. Transcript of Record pp. 5–6.]

This certificate of registration imports and decides that a majority of legal voters voted for the subscription to the stock, and that the railroad was built to the satisfaction of the officials whose duty it was to determine those facts.

The bonds and coupons so issued were sold as negotiable securities upon the open market, and those described in the declaration were so purchased by the plaintiff, as averred in the declaration, before maturity, for a good and valuable consideration and without notice, and if there was authority of law for their issue, he is entitled to all the rights and benefits of a *bona fide* owner and holder thereof.

The interest on these bonds was levied, collected and paid for two years.

These bonds and coupons were payable at the Security Bank of the City of New York, and the township irrevocably pledged its faith and revenue to the payment of them

in the manner aforesaid, thus giving them every possible indication that they were under the authority of law, and making them negotiable securities under the common law or law merchant.

Their payment is now objected to because the defendant claims that there was *no power of law for their issue.*

The act of legislative authority recited upon the bonds is that to incorporate the Paris & Decatur Railroad Co., in force February 13, 1861. This act, by its terms, is declared a public act and to be deemed and taken as a public act, "*and shall be construed beneficially for all purposes herein specified or intended,* and take effect from and after its passage." [Private laws of Illinois, 1861, pp. 509-516.]

It is also claimed by the defendant that the questions involved in this case were all settled in the case of *Township of East Oakland* v. *Skinner*, 94 U. S. 255. But to this the plaintiff objects, as he was not *a party to that suit*, and is entitled to his day in court and to have his controversy with the defendant adjudicated on his own case, and that the doctrine of *stare decisis* does not apply in this case.

Furthermore, since that decision, there have been many, which we think should render these bonds and coupons valid obligations of the defendant, rendered by this court on similar bonds, overruling the doctrine therein laid down. The facts are all admitted, and it is simply a question of statutory construction or *the existence of any legislative authority* for the issue of the bonds and coupons in controversy.

POINTS AND AUTHORITIES.

THE DOCTRINE OF STARE DECISIS NOT APPLICABLE TO THE CASE AT BAR.

Beloit v. *Morgan*, 7. Wall. 619.

Petrie v. *Nuttall*, 11 Exc. 569.

Freeman on Judgments, 3d ed. Sec. 159.

Scotland v. *Hill*, 112 U. S. 185.

Steam Packet Co. v. *Sickles*, 24 How. 342.

Bradley v. *Ballard*, 55 Ill. 418.

County of Warren v. *Marcy*, 79 U. S. 96.

THE ACT OF INCORPORATION OF THE PARIS & DECATUR RAILROAD COMPANY, APPROVED FEBRUARY 13, 1861, IN VIEW OF RECENT DECISIONS OF THE FEDERAL COURTS, WE THINK GRANTS AMPLE POWER OF LAW FOR THE ISSUE OF THESE BONDS.

Private Laws of Illinois, 1861, pp. 509-516.

The *East Oakland* v. *Skinner*, 94 U. S. 255, overruled by *County of Chicot* v. *Lewis*, 103 U. S. 164.

Empire v. *Darlington*, 101 id. 87.

Kirkbride v. *Lafayette*, 108 U. S. 208.

Meyer v. *City of Muscatine*, 1 Wall. 384.

County of Callaway v. *Foster*, 93 U. S. 576.

AS TO CONSTRUCTION OF STATUTES.

The City of Beardstown v. *City of Virginia*, 76 Ill. 35.

Perry v. *Skinner*, 2 M. and W. 471.

Castner v. *Walrod*, 83 Ill. 171.
The People ex rel. v. *Hoffman*, 97 Ill. 234.
Hamilton v. *The State*, 102 Ill. 370.
Bryans v. *Buckmaster*, 1 Breese, Ill. 408.
The People v. *Board of Com'rs*, 3 Scam. Ill. 153.
Oates v. *National Bank*, 100 U. S. 244.
United States v. *Kirby*, 7 Wall. 482.
Suckley v. *Fusce*, 15 Johns. N. Y. 338.
People v. *Utica Ins. Co.*, id. 357-380.
Sedgewick, Const. and Stat. Const., 196.
Wilkinson v. *Leland*, 2 Pet. 627.
Kent, Vol. 1., 462.
Perry Co. v. *Jefferson Co.*, 94 Ill. 215.
Van Hostrup v. *Madison City*, 1 Wall. 296.
County of Callaway v. *Foster*, 93 U. S. 576.
Pompton v. *Cooper Union*, 101 id. 196.
Hamilton v. *The State*, 102 Ill. 370.
People ex rel. v. *The Board of Com'rs*, 3 Scam. 153.
Bryans v. *Buckmaster*, 1 Breese. 408.
Castner v. *Walrod*, 83 Ill. 171.
People ex rel. v. *Hoffman*, 97 Ill. 234.
City of Beardstown v. *City of Virginia*, 76 Ill. 35.
Empire v. *Darlington*, 101 U. S. 87.
Decker v. *Hughes*, 68 Ill. 34.
Zarresseller v. *The People*, 17 Ill. 101.
County of Chicot v. *Lewis*, 103 U. S. 164.

ARGUMENT.

May it please the Court:

At the threshold of this case we are met by the defense with the statement that all questions in this case have been decided by this Court, and the State Supreme Court of Illinois, and that the doctrine of *stare decisis* precludes any further consideration of the questions now presented. The case of the *Township of East Oakland* v. *Skinner*, 94 U. S. 255, and the case of *Campbell* v. *The Paris & Decatur Railroad Co.*, 71 Ill. 611, is claimed to be conclusive as against the plaintiff. But we cannot admit that claim. The argument in neither of these cases has ever been satisfactory to at least a very large part of the bar familiar with this class of litigation, and most certainly is not to the holders of the municipal bonds, which, with the accumulated interest, now amounts to much more than a million of dollars, issued by the various townships along the line of the Paris & Decatur Railroad, and under its charter of incorporation.

The magnitude of the interests involved, and the uncertainty of a legal and just application of established rules of construction of statutes in those cases, we think, should insure a fair consideration of the plaintiff's case, even though the doctrine of *stare decisis* might seem at first blush to be applicable in part to this controversy. But we do not think the rule applies to the case at bar. The *East Oakland Case* was upon coupons taken from bonds issued by that township under the act of incorporation of

the Paris & Decatur Railroad Company, and the *Campbell* v. *Paris & Decatur Railroad Company* was an injunction case for the prevention of the issue of bonds, and entirely different rules applied to that case. It seems to have had weight with this court in the case of *East Oakland*, for then the distinction in reference to the rule of law applicable to *commercial securities* was not as well defined as now, and that case, under the rule of to-day, and the decisions of this court since that time, ought to have no influence whatever, for the facts, as a whole, are not the same in that case and in this at bar. It is true this case depends on the construction of law given to the act of incorporation of the railroad company under which the bonds claim to be issued. But to determine what construction to give to the language of the act, must be gathered from the act, the circumstances, and the interpretation given it by the voters of Paris township in their acts, and their issuance of the bonds. All this was not before the State Supreme Court, for there were no bonds issued in that case, and no acts of the township in their issue, no acceptance of subscription of stock and of the money of innocent third parties in payment of the stock and bonds, as in the case at bar.

Again, at that time the distinction was not clear as to what State court decisions the Federal courts would follow as matter of course. In general, it was State Supreme Court decisions, interpreting their own laws and constitutions. But the question still was, what were State laws and constitutions?—whether acts of merely local application

or those affecting negotiable securities as well. The reply since has been, that *the Federal courts would decide for themselves, entirely independent of State court decisions, all questions affecting negotiable securities, when issued under act of the Legislature of different States, on a controversy as to their payment between citizens of a different State and the municipality issuing them.* We therefore dismiss for the present the effect, if any, of the State court decision, and make the claim that the plaintiff, being a citizen of the State of Maine, has a constitutional right to have his controvery with a citizen—a corporation of Illinois, determined by the Supreme Court of the United States, on bonds he holds of such corporation entirely independent of any State court decisions under the principles of the guarantees of the Federal constitution, the principles of general jurisprudence, the common law, or the law merchant. And that the equities, as well as the technical questions of law, are invoked, and are to be considered in the question of interpreting the language, we claim, grants the legislative power for the issuance of these bonds.

The doctrine laid down in *Bradley* v. *Ballard*, 55 Ill. 418, is of great force, and we think should have its influence on this question, where the court says, to corporations:

"You cannot raise the question of your power to make the contract. It is sufficient that you have made it, and by so doing placed in your corporate treasury the fruits of other's labors, and every principle of justice forbids that you be permitted to evade payment by an appeal to the limitations of your charter. * * * And while courts are inclined to maintain with vigor the limitations of corporate

actions, whenever it is a question restraining the corporations *in advance from passing beyond the boundaries of their charters. They are equally inclined, on the other hand, to enforce against them, contracts, though ultra vires, of which they received the benefits.*"

While citing this case and doctrine, we are not unmindful of the doctrine in the case at bar, that the purchaser of municipal bonds is bound to know that there is authority of law for their issue; but we are also mindful that the very question at issue in the case at bar is whether there was authority of law to issue the bonds in controversy.

We and the plaintiff so believe, and the defense so believed when they were issued, and acted upon such belief in their issue and sale.

What we now claim of this court is, that this interpretation of the authority claimed by this defendant and accepted by the railroad officials and the plaintiff in the purchase of these bonds, be given its full weight by this court in construing the language of the act which we claim grants the authority for their issue, and under which the defense acted in the issue of the bonds.

In the case at bar we think we are not concluded by the decisions above cited, for the reason that *the parties to the suit are different parties.* That it would be manifestly inequitable that the plaintiff should be concluded by a suit to which he was not a party and knew nothing about. That again, when the above cited cases were determined, his bonds were not due, and the obligations he now sues upon had not matured.

In *Steam Packet Co.* v. *Sickles*, 24 How. 342, the court say:

"Such a judgment, in order that it may operate as an estoppel, must have been made by a court of competent jurisdiction, *upon the same subject matter between the same parties for the same purpose.*"

It cannot be said that the plaintiff *is a privy* to the plaintiff in the *East Oakland Case.*

Cromwell v. *County of Sac*, 94 U. S. 357.

In the case of *Scotland County* v. *Hill*, 112 U. S. 185, the court say:

"But it is equally well settled that the decree binds not only Metz and the Company, but all who bought the bonds *after the suit was begun*, and who were chargeable with notice of its pendency or of the decree that was rendered."

In the *County of Warren* v. *Marcy*, 97 U. S. 96, the court say:

"The rule that all persons are bound to take notice of a suit pending with regard to the title of property, and that they, at their peril, buy the same from any of the litigating parties, *does not apply to negotiable securities purchased before maturity.* The considerations which exclude the operation of *that rule to such securities apply to them, whether they were created during the suit or before its commencement, and to controversies relating to their origin or transfer.*"

The operation of estoppel must be mutual. Both the litigants must be alike concluded, or the proceedings cannot be set up as conclusive upon either.

Freeman on Judgments, 3d ed., sec. 159, and Citations.

"It is essential to an estoppel that it be mutual."

Petrie v. *Nuttall*, 11 Exc. 569.

The rule seems to be, as laid down by this court in *Beloit* v. *Morgan*, 7 Wall. 619, where this court say:

"A judgment in favor of a bondholder upon certain municipal bonds, part of a larger issue, against the town issuing them, is conclusive on the question of the validity of the issue on a suit *brought by the same creditor against the same town, on other bonds, another part of the same issue, the parties being identical*, and all objections taken by the town in the second suit having been open, to be taken by it in the former one."

This is not our case. The plaintiff and the defendant are different parties in the *East Oakland Case* and the case at bar, and it would have been utterly impossible for the plaintiff to have appeared in that case and presented his controversy, and we infer that he cannot be bound by it.

This seems to us to be one of those *special cases*, so often excepted in the books and decisions, which we hope we may, without presumption, be permitted to ask the court to consider on its merits without regard to any prior decisions of this or any other court.

Does the act of incorporation of the Paris & Decatur Railroad Company, approved February 13, 1861, grant the legislative power to issue the bonds in controversy?

The answer to this question depends upon what construction is given to the language of the act, the circumstances

under which it was passed, and the acts of the defendant in the execution of the power it claimed the act gave it in the issue of these bonds.

Section 5, of the act *supra*, on the construction of which this case seems to turn, is as follows:

"Said corporation shall cause books to be opened for subscription to the capital stock thereof, divided into shares of fifty dollars each, at such times and places as they may choose, and shall give at least thirty days' notice thereof, by publication in a newspaper published in the town or city where said books may be open, and if there be no newspaper published therein, then the nearest newspaper thereto. *It shall be lawful for all persons of lawful age, or for the agent of any corporate body, to subscribe any amount to the capital stock of said company.*"

The construction given to this section by the State Supreme Court, in *Campbell* v. *Paris & Decatur Railroad Co.*, and this Court, in *East Oakland* v. *Skinner*, is that:

"It confers no power on municipal corporations to subscribe for such stock. The provision manifestly refers to *private corporations, when it authorizes agents to subscribe.* It does not refer to counties, cities, towns or townships, and cannot be held to embrace them. No power is conferred to call the election, or for town officers to make the subscription, or issue the bonds."

This construction given to this statute is not only the most limited and technical, and contrary to all established rules of construction, but *the word private* has to be interpolated into the text to make it at all consistent. If the Supreme Court of Illinois feels obliged to change the wording of the statute to meet its views as to the payment of railroad aid bonds, why not put into the text

the word *municipal*, so that it would read the agent of any *municipal* corporate body, may subscribe, etc. We do not ask this, but simply say if the court can supply the word *private* between the words "*any and corporate body*" it can just as well supply the word *municipal*.

Then again, that court decides that no power was conferred to call an election, etc. The court seems to have forgotten that no power was necessary to be conferred by that act. These people were free American citizens and had *the power under general* laws to call an election at any time on the requisite petition of voters, and to vote on any subject they pleased embraced in the call. They say again, "or for the town officers to make the subscription and issue the bonds." This was not necessary *in terms*. If there was authority to subscribe for the stock, the officials of the township are clothed with authority to execute the subscription and issue the bonds in payment therefor by virtue of their official position, being elected to execute the wishes of the voters legally expressed at elections.

Then again, these voters, in order to comply with the very terms of the law, elected their then supervisor as agent of their corporate body to subscribe for the stock and issue the bonds in payment therefor, which they had a lawful right to do. [See Transcript of Record, Recitals on bond, page 6.]

The Supreme Court lays down the true doctrine of construction in *Hamilton et al.* v. *The State*, 102 Ill. 370, where it says:

"*It is an established rule, in the construction of statutes, that the intention of the law-giver is to be deduced from*

a view of the whole and every part of a statute taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of terms."

Kent, V. 1, p. 462.

Again, this same Supreme Court say in *Perry Co.* v. *Jefferson Co.*, 94 Ill. 215:

"*Statutes must be interpreted according to the intent and meaning, not always according to the letter. A thing within the intention, is within the statute, though not within the letter; and a thing within the letter is not within the statute, unless within the intention.* There is sufficient authority to warrant departure from the words of the statute when to *follow them would lead to an absurd consequence.*"

We complain in this case that because the State Supreme Court *did not* follow the *intention* of the law-giver and *the letter* of the act, that absurd and ruinous consequences followed in the repudiation of all the bonds and interest issued under this act. And that only beneficial results could have followed had that court construed the act according to *the letter* of the act and the intention of the law-givers, as we hope to show.

This court, in *Oates* v. *National Bank*, 100 U. S. 244, endorse the above and cite the same language, and say further:

"The duty of the court, being satisfied of the intention of the Legislature, clearly expressed in a constitutional enactment, is to give effect to that intention and not to

defeat it by adhearing too rigidly to the mere letter of the statute, or to technical rules of construction."

Wilkinson v. *Leland*, 2 Pet. 627.

Sedgwick, Const. and Stat. Constr. 196.

And again:

"And we should discard any construction that would lead to absurd consequences."

Oates v. *National Bank*, *supra*, 244.

United States v. *Kirby*, 7 Wall. 482.

Suckley v. *Fusee*, 15 Johns. N. Y. 338.

The People v. *Utica Ins. Co.*, id. 357, 380.

The case of *Oates* v. *National Bank*, *supra*, concerned *negotiable securities.*

The State Supreme Court again say, in *The People ex rel.* v. *The Board of Com'rs*, 3 Scam. Ill. 153:

"In construing statutes we should look at the real intention and object of the law-makers, as gathered from an examination and comparison of the context of the whole act—*its spirit and import.* If it is apparent, *that, by a particular construction of a statute, in a doubtful case, great public interests would be endangered or sacrificed, it ought not to be presumed that such construction was intended by the legislature.*"

Now, if in the case at bar, the construction of the act under which the bonds were issued *be doubtful*, is not the decision of the court upon it a forced one, and destructive and sacrificial of great public interests? The building of that railroad, and the issue of bonds by the towns all along its line, amounting now to more than a million of

dollars, and the defeat of the same by that decision certainly involves *great public interests* both to the towns that issued them and the holders of them. It is a matter of public notoriety that the road could not have been built without the aid voted by those towns. That it ran through no cities of any importance. There were no *private corporations, insurance companies or banks of any considerable capital, or wealthy citizens in the country through which the railroad was to run at the time or since.* The legislature knew these facts, and that the road to be built must have the aid of the municipal corporations through whose territory it would run.

Then again, *any citizen or any private corporation did not need an act of the legislature to enable them to subscribe to the stock of this railroad company. They could do that if they so desired without any legislative aid.* The act was a nullity, had no significance whatever, if the legislature did *not intend* that it should give *municipal corporations the power to subscribe* to the stock of this railroad company, when it said "*the agent of any corporate body may subscribe.*"

Could the legislature, knowing all the territory through which the road was to run, be guilty of passing a law that was entirely unnecessary for the benefit of citizens individually and private corporations who did not need the act?

Then it must be remembered at that time, a great many acts of incorporation for railroads were being then passed, and granting power to municipalities to subscribe and take

stock in railroads, and many of them were as loosely drawn as this act under consideration, as is well known to this court. In many cases elections were held and bonds issued before there was any legislative authority, and afterwards ratified and legalized by the legislature. The law had not then been settled as to just what was necessary to grant the power, or to execute it in reference to railroad aid bonds. The spirit that pervaded the legislature, and was in the act, was to grant the needed authority to all municipal corporations desiring to aid railroads, and of the people to accept it and execute it in aiding railroads that they thought desirable.

This is not merely our opinion, but is proved, we think, by the act of the legislature, the railroad company's interpretation of the act, and the acceptance of the power claimed under the act by the people of every township along the line.

And we submit to this court that the people so voting and issuing their bonds, and the railroad comany accepting them in payment of the stock subscribed and building the road therefor, were fully as competent to judge of the intention and spirit of the legislature, in granting the power claimed in the act, as the State Supreme Court was a long time after they were issued.

There were eight townships, according to the State Auditor's report, that issued bonds to this railroad company, and can it be possible that these eight separate *municipal governments*, all acting separately, and all their people

when the votes were taken, and the representatives of these people in the legislature, and the railroad company, in getting the act passed by the legislature, itself, were all ignorant of the intention and spirit of the act, and of the legislature in the passage of their act supposed to be wanted by the people and for their benefit. This would be a most violent presumption, and would condemn them all to as bad or worse folly than the legislature would have been guilty of in passing an unnecessary act for the claimed purpose of granting power to citizens and private corporations to subscribe to this stock under the view taken by the Supreme Court.

We must, therefore, conclude that the *intention of the legislature and its spirit*, was to authorize by the act under consideration municipal corporations to subscribe when it says that the agent of any corporate body may subscribe.

Under the above liberal and true rule of construction of statutes, we think the State Supreme Court clearly wrong under their own rule as to *the intention* and *spirit* of the act and of the legislature in passing the act under consideration.

In this direction we quote still further from the State Supreme Court of Illinois. They say in *Bryans* v. *Buckmaster*, 1 Breese. Ill. 408:

"In doubtful cases, if by giving a literal construction to a statute it will be the means of producing great injustice, and lead to consequences that could not have been anticipated by the legislature, courts are bound to presume that the legislature intended no such consequences, and give *such a construction as will promote the ends of justice.*"

The legislature could have never intended any such consequences as have so far occurred from the construction given by that court to their act under consideration. Nor are the *ends of justice promoted* by the construction they have given to the act in question. But rather injustice and repudiation have so far been triumphant by its construction of the act. The town does not complain of any fraud on the part of the railroad company. They admit that the railroad was built as agreed upon, and that they voted and issued the bonds, and that the plaintiff is a *bona fide* holder of their bonds. Would not the interests of justice be promoted by such a construction of this statute as would include *municipal corporations*, in the language of the act of the agent of *any corporate body may subscribe*.

They say, in *Hamilton* v. *Com'rs*, *supra:*

"It is not the province of a court to decide upon the expediency and propriety of a statute, but to ascertain *its just, reasonable and true construction*, and when satisfactorily ascertained, it has only to pronounce the decision."

It seems to us that this is just what that court *did not do* in the construction of the act we are considering. A *just, reasonable and true construction*, would have been to have construed *the language—which does not seem doubtful in its ordinary and usual significance*—which is that the word *any* includes all corporations so desiring to subscribe. It was so construed by all parties interested at the time, as a just and reasonable construction, and why should the court search for a different meaning to the plain language

of the act? The case at bar is different from the one presented to the State Supreme Court in this—the bonds *have been issued and sold as negotiable securities*, and it is but just and reasonable that they should be paid, if any possible power can be found for their issue; while in the case that court decided, the question was to *prevent or restrain their issue*. The questions as to the equities, the election, and justice to parties might be very different in the case at bar from the one the State Supreme Court decided, and might require a much more careful consideration of the court in applying the rules of construction.

In support of the above rule as to intention we cite:

Castner v. *Walrod*, 83 Ill. 171.

The People ex rel. v. *Hoffman*, 97 Ill. 234.

THE LANGUAGE OF THE ACT OF INCORPORATION OF THE PARIS & DECATUR RAILROAD COMPANY TO BE LITERALLY FOLLOWED IN ITS CONSTRUCTION.

The general rule of construction is that the words used in the act are to be construed in their ordinary sense.

"*Any*—means some, however few, or many, or of whatever kind; an indefinite number or quantity."

Worcester's Unabridged Dict., p. 65.

In *Perry* v. *Skinner*, 2 M. & W. 471, the court say:

"The rule by which we are to be guided in construing acts of Parliament, is to look at the precise words and to construe them in their ordinary sense, unless it would lead to any absurdity or manifest injustice; and, if it should,

so to vary and modify them as to avoid that which certainly could not have been the intention of the legislatnre should be done."

In *The City of Beardstown* v. *City of Virginia*, 76 Ill. 35, the court say:

"It is not allowable to interpret what has no need of interpretation, *and where the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning. Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtile and forced construction, for the purpose of either limiting or extending their operation.*"

"In the construction of constitutional provisions and statutes, the *question is not what was the intention of the framers, but what is the meaning of the words they used. A constitution does not derive its force from the convention which framed it, but from the people who ratified it, and the intent to be arrived at is that of the people, and this is found only in the words of the text.*"

Under this rule of enterpretation the construction of the voters on the bonds in issue in the case at bar, of the statute under which they were issued and that of the railroad company, the parties primarily interested, *becomes very important*. The railroad company, and at least a majority of the voters of the eight townships, were agreed as to what power the statute gave them, and so remained for two years after the bonds were issued and sold, as is evident from their collecting the tax for the interest, and the the paying of the same.

They could not have been so agreed, so many of them in so many different towns, unless the language of the act

had been reasonably plain, clear, and definite in its meaning. These voters were honest men in voting this subscription, and issuing the bonds for its payment. It would be most absurd to charge them with voting for and issuing *void bonds*. Moreover, the attorneys of the purchasers of these bonds unquestionably examined as to the power to issue them, and as to whether that power had been lawfully exercised under the law merchant applicable to such negotiable securities. Is it possible that all these people could be mistaken as to the *ordinary sense and most obvious import of the words used* in the act which we claim grants the power for the issue of these bonds?

We think such a conclusion is utterly impossible and that the State Supreme Court again violated its own rule of construction of statutes in the *case, supra*, cited, when it held that the words "*Any corporate body*, meant *only private corporations*."

The fair and obvious meaning of the word "*any*," in the connection used in the act, is that the agent of any corporate body, either public or private, is inclusive of all corporations desiring to subscribe — somewhat synonymous with the word "*every*"—the agent of "*every*" kind of corporate body desiring to subscribe.

In the case of *County of Chicot* v. *Lewis*, 103 U. S. 164, this court decides what the word "*any*" means in a statute conferring power on a county to issue bonds to a railroad. This court say, p. 166: "The act did not restrict the county to a single subscription. Its language is, '*any* county in this State may subscribe to the stock of *any*

railroad in this State.'" * * * "*The power given is a power to subscribe to any railroad.* This *includes all railroads in the State, without restriction.* The words *any railroad*, are used *distributively, including all railroads taken severally,* and the limitation has reference to the subscription to '*any railroad*,' that is to *any one railroad taken separately.*"

We think this case exactly analagous with the case at bar, where this court hold exactly as we claim, that is, that the agent of *any corporate body*, means the agent of *all corporate bodies*, public and private, and that the agent of any such corporate body was fully and definitely, as language could empower him, authorized to subscribe to the capital stock of the Paris & Decatur Railroad Company.

We call the attention of the court to the fact that the *East Oakland* v. *Skinner case, supra*, was decided at the October term, 1876, and this case of *County of Chicot* v. *Lewis, supra*, at the October term, 1880, and as we understand it, *completely overules the decision in the East Oakland case.*

Howard v. *Booneville Cen. Nat. Bank*, 108 U. S. 314.

Kirkbride v. *Lafayette Co.*, 108 id. 208.

Empire v. *Darlington*, 101 id. 87.

In the case of *Van Hostrup* v. *Madison City*, 1 Wall. 291, the words of the act are:

"To take stock in any chartered company for making a road or roads to said city."

This court say, p. 296:

"It is supposed that the authority to subscribe is tied down to a chartered road—the line of which comes within the limits of the city; and that the words are to be taken in the most literal and restrictive sense. *But this, we think, would be not only a very narrow and strained construction of the terms of the clause, but would defeat the manifest object and purpose of it.* * * * The terms of the clause do not limit the subscription to *one road or to one company, road or roads, in any chartered company.* * * * In the construction of the grant of powers, extreme cases may be suggested against it, which it is difficult to answer. But in the present and *kindred cases, something may be trusted to the wisdom and integrity, as well as the interest, of the body appointed to execute the power. Even if the case had been doubtful, inasmuch as the city authorities have given this construction of the charter, and bonds have been issued and in the hands of bona fide purchasers for value, we should have felt bound to acquiesce in it.*"

For construction of similar statutes to the one under consideration, see—

Pompton v. *Cooper Union*, 101 U. S. 197.

County of Scotland v. *Thomas*, 94 id. 682.

County of Ray v. *Vansyckle*, 96 id. 675.

In the case of *County of Callaway* v. *Foster*, 93 U. S. 567, the language of the act, sect. 29, was:

"It shall be lawful for the county court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company," etc.

The court held bonds good in payment of said subscription, in referring to this decision in *Pompton* v. *Cooper*, *supra*, in the following language:

"*Upon a reasonable construction it embraces Callaway,* which was one of the possible sites, and a site ultimately occupied in fact. The bonds were sustained."

Again, in *Howard Co.* v. *Booneville Cen. Nat. Bank*, 108 U. S. 314, the language of the act is:

"It shall be lawful for the county court of any county in which any part of the railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of said company."

The court held, under this act, authority was given—

"To extend branch railroads into and through any counties that the directors may deem advisable."

The directors here construe the act, and their construction is upheld. Why not the construction placed upon the act in question in the case at bar, by all the electors who voted for the stock and issued upon such vote, the bonds in question, and the railroad company who, upon such construction and vote, accepted the bonds?

In *Kirkbride* v. *Lafayette Co.* 108 U. S. 210, the language of the act invested county courts in Missouri with the power to subscribe in behalf of their townships in their respective counties, to the capital stock of any railroad company within the state, "building or proposing to build a railroad into, through, or near such township."

This court say, in the last above case:

"That was a question which the people of that township and the county court of the county were qualified, and within reasonable limits, authorized to settle for themselves. Their action in favor of a subscription was supplemented

by payment of interest three years. Under these circumstances, as between a *bona fide* holder for value, as the plaintiff is conceded to be, the courts should acquiesce in the determination by the qualified voters and the local authorities, that the road in question was near to Lexington township."

In the last two cases cited above it was a question of the construction of the statute as to the power granted therein.

This court in those cases followed the construction given by the voters and the directors—those directly interested—and why not follow the same rule in the case at bar?

Meyer v. *City of Muscatine*, 1 Wall. 384.
Gelpecke v. *City of Dubuque*, 1 id. 175.

"*Where one of two innocent persons must suffer a loss, and one of them has contributed to produce it, the law throws the burden upon him, and not upon the other.*"

Pompton v. *Cooper Union*, 101 U. S. 204.
Hearn v. *Nichols*, 1 Salk. 289.
Merchant's Bank v. *State Bank*, 10 Wall. 604.

If there ever was a case where the above rule was applicable, it seems to us that the case at bar is the one, and if there are doubts as to the construction of the statute granting the power to issue his bonds, they should all be decided in favor of the plaintiff, as he was in no sense responsible for their default, and the defendant contributed to produce the loss, while the plaintiff is an innocent purchaser and holder of the bonds.

In *Decker* v. *Hughes*, 68 Ill. 34, the court say:

"That a statute ought to be so construed, that, if it can be prevented, no clause, sentence, or word should be superfluous, void or insignificant."

And yet, in construing the act under discussion, they not only make *insignigcant and void of all its inclusive power the plain and easily understood word "any,"* but actually *interpolate*, in effect, the word "*private.*" They leave the judicial function of construing the words as found in the act, and assume the legislative function of putting into the plain text, and where it is not needed, to a clear understanding of it—the word "*private.*"

The same court say, in *Zarresseller* v. *The People*, 17 Ill. 101:

"In construing a statute the intention of the legislature will be considered; and to this end the whole act, *the law existing prior to its passage, the motive for its passage, and the mischief to be remedied or avoided, will be carefully weighed.*"

Under this rule the law prior to the passage of the act now in question, *was to grant municipal corporations power to aid railroads when desired.* Railroads were a necessity in Illinois at that time, and demanded by the people, who were willing to help pay for them. *The motive for its passage was to give the municipal corporations this power, since private citizens and private corporations* DID NOT NEED *the act for them to subscribe to such stock.* There could therefore have been *no other motive,*

and the mischief to be remedied or avoided WAS THE REPUDIATION OF THESE BONDS ISSUED UNDER THE ACT IN QUESTION, and made possible by the decision of the State Supreme Court in *Campbell* v. *P. & D. R. R. Co.*, 71 Ill. 614.

But the State Supreme Court decide that *no power is conferred upon* the people to *call an election*, to vote for the subscription, by the act in question. No such power in the act was necessary. The authority *to subscribe* carried with it all that was needful under laws to carry into effect the subscription to the satisfaction of the railroad company for whose stock the subscription was made.

Supervisors v. *Schenck*, 5 Wall. 187.
Town of Coloma v. *Eaves*, 92 U. S. 484.
Lemont v. *Singer & Talcott Stone Co.*, 98 Ill. 108.
Anthony v. *Jasper Co.*, 101 U. S. 693-697.

The general election laws would control as to the manner of calling the election, and holding the same in carrying into effect the power to subscribe for the stock granted in the act.

Where the power exists, the matter of calling the elections and the voting and returns, are left to the general laws of the precinct, and even when not fully complied with are considered irregularities, and informalities, providing there has been a fair expression of the will of the electors, and a majority favor the subscription, in a contest by a *bona fide* holder for the payment of such bonds.

Pana v. *Bowler*, 107 U. S., 539.
Bonham v. *Needles*, 103 id., 648.
Quincy v. *Cook*, 107 id., 549.

Supervisors v. *Schenck*, 5 Wall., 187.
Town of East Lincoln v. *Davenport*, 94 U. S., 801.
Rock Creek v. *Strong*, 96 U. S., 271.

Again, the State Supreme Court, in their decision in *Campbell* v. *P. & D. R. R. Co.*, *supra*, say: "It conferred no power for the town officers to make the subscription or to issue these or any other bonds."

It has been held time and again, that the vote of the people to subscribe, and the acceptance of the railroad company of such subscription, *was the debt and the contract*, as far as the municipality was concerned.

Harter v. *Kernochan*, 103 U. S. 573.

The issuance of the bonds is but the carrying into effect the details of the contract so made. The bonds being the evidences of the contract made and the debt asumed by the vote of the electors of the municipality issuing them. And that the supervisor and town clerk in Townships were by virtue of their official position, as the executive officials of the town, the proper parties to execute bonds voted by the electors of the township, where no official was designated for their execution by the act granting the power for their issue. It was therefore not necessary that any specific power be given them by the act, to subscribe for the stocks and issue the bonds. They would have had no more power had they been named in the act than they had by virtue of their official prerogatives for those duties.

County of Moultrie v. *Rockingham*, 92 U. S. 631.

As settling also the question of the effect of the Constitution of 1870:

The People v. *Logan Co.*, 63 Ill., 377.
Nugent v. *Supervisors*, 19 Wall, 241.
County of Cass v. *Gillett*, 100 U. S. 585.
Fairfield v. *Gallatin Co.*, 100 id. 47.
Commissioners v. *January*, 94 U. S., 265.

But municipal corporations have the power to name an agent to execute their will, obtained by a vote of the electors, the same as a private corporation or an individual.

McCall v. *Town of Hancock*, Fed. Rep. Vol. 10, p. 8.
County of Callaway v. *Foster*, 93 U. S., 567.

To bring themselves *literally* within the words of the act they did elect for that purpose *their supervisor* to make the subscription and issue the bonds, and the bonds are signed by Henry VanSellar, supervisor and agent, and Jas. A. Dittoe, clerk.

Transcript of Record, Copy of Bond, p. 6.

The defendant was *a corporate body*, and elected its agent to subscribe for the stock in accordance with the terms of the act granting the power.

The recital on the bonds is as follows:

"*This bond is issued in pursuance of an election held in said township of Paris on the 30th day of October, 1869, at which election the supervisor of said township of Paris was duly elected agent of said township, to subscribe the sum of fifty thousand dollars to the capital stock of the Paris and Decatur Railroad Company, and to issue the bonds of said township in payment of said stock, to aid*

in the construction of said railroad, and by virtue of an act of the Legislature of the said State of Illinois, entitled 'An act to incorporate the Paris and Decatur Railroad Company,' approved February 13, 1861."

The State Supreme Court, when it construed the act in question, probably did not have *a bond with recitals before them.* These recitals IMPORT, as strongly as language can state, that the people were called to consider whether they should subscribe for the stock, and how they would pay for it, who should subscribe for it, and who should issue the bonds; that the issue of bonds, and the kind of bonds and rate of interest to be paid, and that the election was legally held, and in the registration certificate sworn to by this same Supervisor, that all the conditions precedent necessary to the issuance of these bonds, including the building of the railroad and a majority vote in favor of the subscription, had been complied with.

The people had a legal right to call the election under general laws, had, as they supposed, a right to vote the subscription and pay for it as they pleased, and we think had the Supreme Court had all these facts recited in this bond before them, their construction of the act would have been different.

At any rate, all these acts that we have so fully cited show in the case at bar that they must be considered in construing the act under which these bonds were issued.

A reasonable, just and fair interpretation of the words used in the act, and one that would promote justice and

prevent mischief, and promote the public welfare, would be one that would sustain the interpretation given to the act by these people, most interested in it.

This court has frequently held that the recitals of the bonds import a compliance with the laws on all subjects to which they refer. Under this rule, the question of the call for the election, the vote, the subscription to the stock, and the issue of the bonds by the proper officers, and the building of the railroad, are all settled as done in conformity to law, providing there was legislative authority for the subscription to the stock, leaving that as the *only question* to be determined in the case at bar.

Town of Venice v. *Murdock*, 92 U. S. 494.
Wade v. *Walnut*, 103 U. S. 695.
Marcy v. *Oswego*, 92 id. 637.
Harter v. *Kernochan*, 103 id. 570.
Lynde v. *County*, 16 Wall. 6.
Commissioners v. *Bolles*, 94 U. S. 104.
County of Warren v. *Marcy*, 97 id. 96.

The *Eagle* v. *Kohn Case*, 84 Ill., 292, had not then been decided, and in any view of the doctrines there laid down does not affect this case, as it must stand or fall on the laws and decisions as they stood at the time the bonds were issued.

This is a very different case from that class of cases when there was no vote of the people, or, where the vote was *only to subscribe to the stock*. For in this case *the recitals show the vote was to subscribe and issue bonds in*

payment thereof, and also to appoint the agent to do these acts. It would therfore seem that if the people were satisfied with the power given under the act and so interpreted it, and were willing to assume the debt they thought it allowed them to contract, *the courts certainly ought to be.* And that in justice, those who in good faith and without notice purchased their bonds in the open market as negotiable securities ought to be protected by a construction of the act in accordance with the obvious, ordinary meaning of the words used therein, which would make these bonds valid obligations of the defendant.

Johnson v. *County of Stark*, 24 Ill., 75.
Grand Chute v. *Winegar*, 15 Wall., 371.
Mercer v. *Hackett*, 1 Wall., 83.
Meyer v. *City of Muscatine*, 1 id., 175.

It will probably be objected that the form of the signatures of the supervisor *as agent and supervisor*, was so different from the usual form of township official bond signatures as to give notice of defective power, or its exercise in the execution of the bonds. But this position is untenable, for an examination would show a literal compliance with the words of the act in this respect, and further shows that the *supervisor signs the bonds in the double capacity of supervisor* AND AGENT.

We therefore submit that any good attorney, upon the examination, at that time, of the act, and all the proceedings thereunder, and the recitals upon the bonds, and familiar with the decisions of the courts upon such negotiable securities, would have concluded that they were

legally issued—that there was ample legislative power, and that it had been legally executed in the issue of the bonds in question. It must be further borne in mind that these bonds were issued March 23, 1871, and the decision of the State Supreme Court construing the act as limiting the power to private corporations, was rendered at the January term, 1874, almost three years thereafter.

Northwestern Bank v. *Porter Township*, 110 U. S. 608.

San Antonio v. *Mahaffy*, 96 U. S. 312.

Bissell v. *Jefferson City*, 24 How. 287.

Buchannan v. Litchfield, 102 U. S. 278.

We think we have fully shown above, under all rules of construction of statutes, and have purposely cited freely from the rules laid down by the State Supreme Court of Illinois, that that court violated all of its own rules on this subject in its construction of the act in question. That in a construction of that statute within these rules ample power is given by the legislature for the subscription and the issue of the bonds in question.

That they were legally issued under that power, and that equity, law and justice demand their payment—and that this court overruled the decision in the *East Oakland* v. *Skinner Case, supra*, in the case of *County of Chicot* v. *Lewis*, 103 U. S. 164, and others cited.

Howard v. *Booneville Cen. Nat. Bank*, 108 U. S. 314.

Kirkbride v. *Lafayette Co.*, 108 id. 208.

That this court does not follow, unless satisfied with the decision of the State Court, their decisions in matters involving negotiable securities.

Pine Grove v. *Talcott*, 19 Wall. 577-578-678.
Butz v. *Muscatine*, 8 Wall. 579.
Olcott v. *Supervisors*, 16 Wall. 678.
Pana v. *Bowler*, 107 U. S. 541.
County of Otoe v. *Railroad Co.*, 16 Wall. 667.
Town of Venice v. *Murdock*, 92 U. S. 501.
Supervisors v. *Schenck*, 5 Wall. 784.
Swift v. *Tyson*, 16 Pet. 18.
Gelpeke v. *Dubuque*, 1 Wall. 203.
Burgess v. *Seligman*, 107 U. S. 20.

We therefore ask this court to again examine the questions at issue in this case upon its merits, and to reverse the judgment of the court below, on the errors assigned.

GEORGE A. SANDERS,
For Plaintiff.

UNITED STATES OF AMERICA.

IN THE

Supreme Court of the United States.

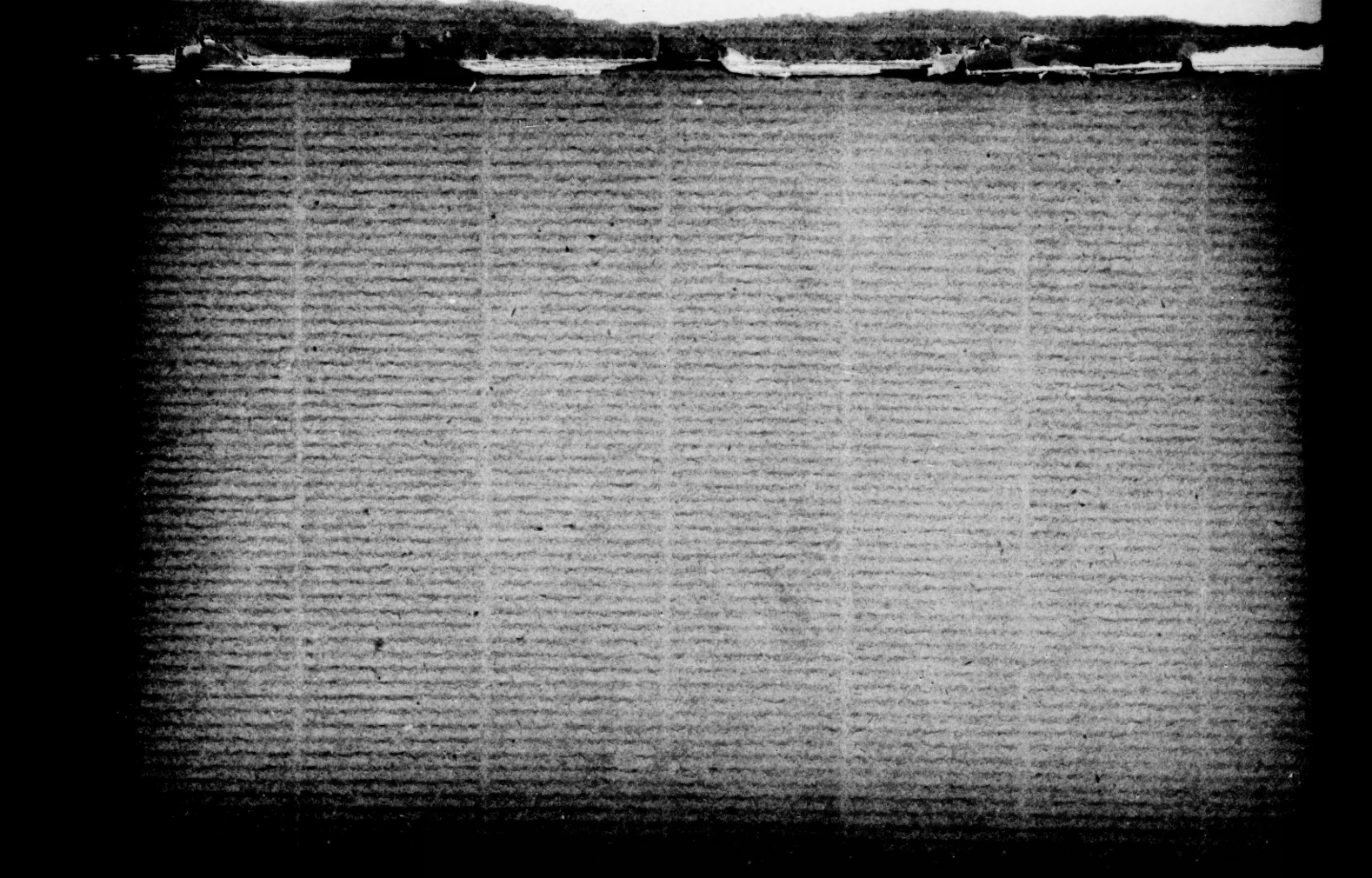
AT THE OCTOBER TERM, A. D., 1889.

CHARLES DAVENPORT,
vs.
THE TOWN OF PARIS.

Assumpsit;
No. 268.

Error to the Circuit Court, Southern District of Illinois.

R. B. LAMON,
For defendant in error.



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CHARLES DAVENPORT, *vs.* THE TOWN OF PARIS. } *Assumpsit;* No. 268.

Error to the Circuit Court, Southern District of Illinois.

This suit is upon certain alleged bonds of the Town of Paris, Edgar County, State of Illinois, which, it is claimed, were issued in pursuance of an election held in said town in October, 1869, whereby the supervisor of said town was authorized to subscribe $50,000 to the capital stock of the Paris and Decatur Railroad Co., and issue the bonds of said town in like amount to said railroad company in payment therefor. The bonds recited these facts, and also the further fact that they were issued "by virtue of an act of the Legislature of the State of Illinois, entitled an act to incorporate the Paris and Decatur Railroad Company, approved February 13, 1861."

These bonds went into the hands of a trustee, then to the Paris and Decatur Railroad Co., and were registered and fell into the hands of other parties, and the plaintiff sued upon them in the Circuit Court of the United States for the Southern District of Illinois, and brings the case here on error.

The defence in this case is, the want of power on the part of the defendant to make the bonds in controversy. The plaintiff's cause of action is hinged solely on this proposition; had the defendent lawful authority to make these bonds?

If the Town of Paris was authorized to make these bonds the authority must be expressed in some law of the State of Illinois. Such authority cannot exist by implication, but, must be obvious, and its residence capable of ascertainment, within the statutes of Illinois, defining and qualifying the powers of the Town of Paris, by a reasonable construction thereof.

The Town of Paris was created in the mode prescribed in the laws of Illinois and has such powers as are specified in the chapter commonly called "The Township Organization Law" of that State. No authority is found in that act for towns to subscribe to the stock of any railroad company, or to issue bonds thereto, or to aid any railroad company, in any manner whatever.

> Revised Statutes of Illinois, Chapter 139, Article 4, Section 2.

There is no general law authorizing defendant to make the bonds in controversy. Is there any special enactment affording this needed authority?

It is asserted that there is and that the recital of these bonds discloses such authority, by referring to "An act to incorporate the Paris and Decatur Railroad Company. Approved February 13, 1861."

Section 5 of said act is in these words, "Said corporation shall cause books to be opened for subscription to the capital stock thereof, divided into shares of fifty dollars each at such times and places as they may choose, and shall give at least

thirty days notice thereof by publication in a newspaper in the town or city where said books may be open and if there be no newspaper published therein, then the nearest newspaper thereto. It shall be lawful for all persons of lawful age, or for the agent of any corporate body to subscribe any amount to the capital stock of said company."

This section is conjured to emit, or in some way afford the authority for the issue of these bonds.

A fair construction of this section does not authorize the Town of Paris to make these bonds. This act is in the Private Laws of Illinois of 1861, pages 509 and 516 inclusive, and it nowhere mentions towns, cities or counties—indeed, it was enacted before the towns in Illinois embarked in the business of aiding railroads by donations or otherwise. (The township organization act became a law in 1857).

This act was construed by the Supreme Court of Illinois in Campbell *vs.* The Paris and Decatur Railroad Co., 71 Ills., 611. The Court uses this language in construing section 5 of the said act of incorporation: "This is the only provision in the charter in reference to subscriptions by either persons or corporations. It confers no power on municipal corporations to subscribe for such stock. The provision manifestly refers to private corporations where it authorizes agents to subscribe. It does not refer to counties, cities, towns or townships, and cannot be held to embrace them. No power was conferred to call the election, or for the town officers to make the subscription, or to issue these or any other bonds." This was a case where the power of a town to issue bonds of the same character as the bonds in controversy was the question before the court.

In the Town of East Oakland *vs.* Skinner, 94 U. S. 255, this court also construed the act incorporating the Paris and Decatur Railroad Co., in a suit on bonds which were identical in character with the bonds in controversy, and determined that such bonds were issued without any authority, and therefore void in the hands of any holder.

This matter is settled by these authorities. The holder of these bonds were notified of the want of power in the Town of Paris to make them, by the recital on their faces, and cannot be heard by a court when he says he is an innocent holder of negotiable instruments, etc.

The (many) authorities, cited by plaintiff in error, are each beside the point upon which this case hinges.

In the case cited from 55 Ills. 418, Bradley *vs.* Ballard the court expressly except municipal corporations from the scope of the opinion, and says it has no application to them whatever.

Where there is power in a municipality to issue bonds, mere irregularities in their issuance may be cured in one way and another, but the want of power to issue is fatal, and the acts of the municipal officers, the registration of bonds, and the recitals the bonds contain are also powerless to give them integrity, and they are void in any holder's hands, wherever they may be.

The plaintiff in error dwells upon equities, which he claims exist between the parties and toward himself, but the defendant makes no suggestion as to them, or any counter equities, as this suit is at law, and the rights and liabilities of the parties are to be measured by the rules of law. Any equities which are inferable are not available to either party, if they run across the plain rules of law, which govern this case.

R. B. LAMON,
For defendant in error.